

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

GUMERCINDO ROMERO JR., )  
vs. Plaintiff, ) NO. CIV-16-0581-HE  
HECTOR RIOS, *et al.*, )  
Defendants. )

## **ORDER**

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, brought this action under 42 U.S.C. § 1983 alleging violation of his Eighth Amendment rights. He asserts claims of conspiracy and failure to protect from inmate violence, and seeks judgment for monetary relief against defendants Warden Hector Rios, Sergeant Hill, Sergeant Clark, and Sergeant John Doe, each in their official and individual capacities. This matter was referred to U.S. Magistrate Judge Shon T. Erwin for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), and Judge Erwin recommends dismissal of plaintiff's claim of conspiracy and his § 1983 claims against defendants Rios, Clark, and John Doe. Plaintiff was previously granted an extension of time until September 19, 2016, to object to the Report and Recommendation, but no objection has been filed.

The court concurs in the substantial thrust of the Report. It correctly concludes the complaint fails to state a claim against any defendant other than defendant Hill. However, the deficiencies in the allegations as to the conspiracy claim and the deficiencies in the failure to protect claim against the other defendants are potentially subject to correction by

amendment. Dismissal of those claims should therefore be without prejudice. The Report [Doc. #8] is therefore **ADOPTED** as follows: the conspiracy claim against all defendants and the failure to protect claims against defendants Rios, Clark and Doe are **DISMISSED**, with leave to amend. Any amended complaint shall be filed within thirty (30) days. This matter is re-referred to Judge Erwin for further proceedings, including resolution of plaintiff's motion to appoint counsel [Doc. #9].

**IT IS SO ORDERED.**

Dated this 4th day of November, 2016.



JOE HEATON  
CHIEF U.S. DISTRICT JUDGE